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IN THE

Supreme Court Of The United States

October Term, 1975

No. 75-3471

LORN L. HINISH,
Petitioner,

v.

HILDA R. HINISH,
Respondent.

On Petition for Writ of Certiorari from
the Court of Special Appeals,
State of Maryland

~~JURISDICTIONAL STATEMENT~~

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JURISDICTIONAL STATEMENT

OPINION BELOW

The opinions of the Court of Special Appeals of the State of Maryland are unreported and unpublished in the official Maryland Report and are set forth in the appendix, infra, pages 1a through 16a.

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JURISDICTION

Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1257(3), this being a matter which draws into question the validity of Article 16 §25 Maryland Code Annotated 1957 infra, page 48 (Section IV—Since the mother is the natural custodian) on ground that it is repugnant to the Constitution of the United States; repugnant to Maryland Constitution of the State of Maryland; that it is repugnant to laws of the United States and denies rights specially set up under the Constitution. Jurisdiction of this court is sustained by 7B J. Moore, FEDERAL PRACTICE J.C. 1257 (2d ed. 1974); C. A. WRIGHT, LAW OF FEDERAL COURTS §107, at pp. 491-492 (2d ed. 1970).

This case also draws into question Article 46, Declaration of Rights, Equal Rights Amendment (E.R.A.)[1], Maryland State Constitution; Article 72A—Parent and Child, Maryland Code Annotated 1957;[2] and the supremacy of Article XV Section 6 Maryland Constitution.

Petitioner sought judgment for the custody of his infant child, Lori E. Hinish, born August 21, 1967, which had been put in question pursuant to a divorce decree granted to Petitioner on grounds of Respondents adultery. Judgment

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1. E.R.A., an acronym for EQUAL RIGHTS AMENDMENT, Art. 46 of the Declaration of Rights of the Maryland Constitution and proposed Twenty-seventh Amendment to the Constitution of the United States. Art. 46, which became effective December 5, 1972, states that "Equality of rights under the law shall not be abridged or denied because of sex." The proposed Federal Amendment, ratified by thirty-four of the required thirty-eight States reads in part, "Equality of rights under the law shall not be denied or abridged by the U.S. or by any State on Account of Sex."
2. Art. 72A, Parent and Child, Maryland Annotated Code 1957 was amended, effective date July 1, 1974, added at the end of the fourth sentence "but, in any custody proceeding, neither parent shall be given preference solely because of his or her sex."

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was refused by the trial court in an order dated June 19, 1973, on the ground that "a small girl must rely on her mother's attentions and companionship, however devoted her father may be." and, "custody is ordinarily awarded to the mother . . . even if the father is without fault."

On appeal to the Maryland Court of Special Appeals, the order denying judgment was affirmed on January 14, 1974, on grounds "since the mother is the natural guardian of the young and immature, custody is ordinarily awarded to her . . . even when the father is without fault" citing *Hild v. Hild*, 221 Md 349 (1960) and "while the mother is still regarded as the favored custodian for children of young and tender years, *Hild*, supra,".

The issue of custody of the infant child was again raised due to change of circumstances, Maryland Law, as the adulterous mother married the paramour, who had a long history of mental and emotional problems. The request for modification of the custody decree of June 19, 1973, was denied by the trial court by order dated December 3, 1974.

On appeal to the Maryland Court of Special Appeals, request for Certiorari to the Court of Appeals—denied January 29, 1975, the order denying modification for custody to the father was affirmed June 17, 1975; request for Certiorari to the Court of Appeals—denied August 1, 1975. A timely notice of filing petition for Certiorari to this court was filed in the Circuit Court of Howard County, State of Maryland, on August 5, 1975, infra p. 50a-52a.

A Civil Suit was filed in Federal Court pursuant, *inter alia*, to 42 U.S.C. §1983 and 28 U.S.C. §1343,[3] on August

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3. The Civil Suit, K-74-832, named Defendants as State of Maryland; Marvin Mandel, Governor, James Macgill, Judge, and Department of Social Services, Howard County Division; and the Federal Forum has

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2, 1974, alleging that Petitioner has been denied Equal Protection of the law and Due Process of the law and a pattern of discrimination existed against him and against similarly situated males on the basis of their sex, and that the legal rationale underlying Maryland Courts' custody award was constitutionally impermissible. This suit is not part of this case, but suggestion was made to pursue this courts ruling, by federal forum, on E.R.A. per lower courts' rulings.

The Court of Special Appeals of the State of Maryland explicitly rejected Petitioners (Appellant in State Court) challenge, Equal Rights, Art. 46 Maryland Constitution, Maryland law(s) Article 72A Maryland Code Annotated 1957 challenge; Seventh Amendment Federal Constitution challenge; Law of the land Challenge laid down by this court in *Weinberger v. Wiesenfeld* No. 73-1892 March 19, 1975, and this matter is therefore, appropriately brought to this Court by Petition for writ of Certiorari pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the Constitution of the United States.

2. This case involves the Seventh Amendment to the Constitution of the United States.

3. Also involved are:

   a. Article 46, Declaration of Rights, Equal Rights Amendment (E.R.A.) Maryland Constitution which provides;

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retained jurisdiction but abstained on merits until State Courts have a chance to rule on the alleged Sex-discrimination charged, and to have a chance to construe E.R.A. and Art. 72A Maryland Code Annotated 1957.

> Equality of rights under the law shall not be abridged or denied because of sex.

b. Article 72A—Parent and Child, Maryland Code Annotated 1957 which provides;

> But, in any custody proceeding, neither parent shall be given preference solely because of his or her sex.

c. Article 16 §25, Section IV, Maryland Code Annotated 1957 which provides;

> Since the mother is the natural custodian of the young and immature custody is ordinarily awarded to her . . . even when the father is without fault . . . *Hild v. Hild.*

d. Article XV §6 Maryland Constitution which provides;

> The right of trial by jury of all issues of fact in civil proceedings in the several courts of law in this state, where the amount in controversy exceeds the sum of five dollars, shall be inviolably preserved.

e. Maryland Rules of Court No. 517 which provides;

> The practice heretofore existing of transferring issues of fact arising in an action in equity to a court of law for an advisory verdict by a jury is hereby abolished. All such issues shall be determined in the equity court in accordance with the existing equity practice, without a jury.

QUESTIONS PRESENTED

Whether fixing a different criteria by State Statute specifying for females are the natural custodian, favored custodian, in the context of child custody and support

matters violates the due process and equal protection clauses of the Fourteenth Amendment.

Whether the criteria established by the trial court, affirmed by the Court of Special Appeals of Maryland, awarding custody of child were erroneous and repugnant to the Federal Constitution and to the Maryland State Constitution, Article 46 Declaration of Rights, Equal Rights Amendment.

Whether denying trial by jury under authority of a Court Rule of Procedure, in absence of Amendment to State Constitution violates Constitutional guarantees and supremacy of the Seventh Amendment.

STATEMENT

Petitioner and Respondent were once husband and wife, on November 17, 1972, a decree of divorce was entered, on grounds of wife's adultery, which contained the following provision:

> And it is further ADJUDGED, ORDERED, and DECREED that all matters pertaining to child custody and attorneys' fees be reserved for future determination by the court.

The parties had one child of the seventeen year marriage born August 21, 1967, and two boys (now emancipated) by Respondents first marriage, which were ages three and six at the time of their marriage. The daughter of the marriage is the subject of the custody issue.

Petitioner (Complainant in State Court) filed petition for custody of Lori, after argument commenced March 1973, continued to June 1973, the trial court on June 19, 1973, entered findings of fact, conclusions of law, and an order denying petitioners request. The order is set forth infra,

p. 17a through 22a. (The order also related to other matters including support money due for the parties' daughter, and payment of attorney's fees. These matters, however are not involved in this case.)

Since respondent married the paramour, known to have had a long history of mental and emotional problems, petitioner felt it was not in the best interest of his child to remain with her mother and requested court modification of the decree dated June 19, 1973. The trial court decided the matter after argument commenced March 1974 continued through November 1974, and denied Petitioners request by decree dated December 3, 1974 infra, p. 23a through 28a.

Prior to the divorce decree, petitioner brought a Criminal Conversation suit against the wifes' paramour, her now husband, which was dismissed after divorce decree was issued.

Subsequent to Court of Special Appeals first mandate and prior to hearings on petition for change of custody, petitioner filed suit in Federal Court, District of Maryland pursuant, *inter alia*, to 42 U.S.C. 1983 and 28 U.S.C. 1343 on August 2, 1974. On March 26, 1975 the Federal Forum (K-74-832), in the exercise of its discretion, abstained on the merits and retained jurisdiction until the State Court had the opportunity to speak to the sex-discrimination and other issues raised therein. The Federal Case now rests in the Federal Forum, through the abstention doctrine, and retains jurisdiction until after all appeals have been completed.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

Petitioner's request for change of custody was argued orally, written Memorandum of law provided on day of trial,

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set forth the E.R.A. and oral argument established that the courts of Maryland eyed male custody with suspicion and request for trial by Jury was made by Petition to the trial Court-denied using Rule of Procedure 517, E.R.A. was not given judicial recognition. On Appeal to the Special Court of Appeals the issues of E.R.A., Article 72A—Parent and Child, Trial by jury under Rule 517 was not in compliance with the Seventh Amendment, and the Court of Appeals did not direct its attentions to this matter and merely recited the Maryland Court Rule of Procedure 517. The issues were again submitted to the Court of Appeals, Maryland, by Petition for Writ of Certiorari infra, p. 29a through 49a. Also presented to the Court of Appeals were the errors made in the Court of Special Appeals Decision, but the Court of Appeals denied Certiorari on August 1, 1975.

The trial court failed to address itself to the E.R.A. issue; the Court of Special Appeals gave it lip service in No. 368, infra, p. 5a, and totally ignored E.R.A. and Article 72A in No. 1009, infra, p. 7a through p. 16a as well as the jury trial issue of the Seventh Amendment; The Court of Appeals failed to address itself to the issues by denying petition for Certiorari, therefore, the E.R.A. has not yet been construed by the State of Maryland as an Amendment to the State Constitution, and as it applies by Legislative act as pertains to Article 72A, Maryland Code Annotated 1957, thereby the Courts of the State of Maryland has refused to express any views thereto, leaving it to this court to construe the law for them.

The issue of the Seventh Amendment was commenced in the trial court, denied on grounds of Rule 517 Maryland Court Rule of Procedure; the Court of Special Appeals did not define the meaning of express statute and since the denial of jury trial in the absence of express statute in the Maryland Code, nor has the State Constitution been amended, this

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Rule of Court Procedure has the effect of denying a right guaranteed under the Seventh Amendment. The lower courts refused to address themselves to this issue.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

As applied by the Special Court of Appeals, "Since the mother is the natural guardian of the young and immature, custody is ordinarily awarded to her", infra p. 4a, and, "while the mother is still regarded as the favored custodian for children of young and tender years", infra p. 5a, and as applied by the trial court "the fact remains, however, that in most instances, on a day by day basis, a small girl must rely on her mother's attentions and companionship, however devoted her father may be", infra p. 21a. The statute Article 16 §25, Maryland Code Annotated 1957, Section IV p. 48 (The mother is . . .) deprives fathers of the right to companionship and custody while it gives to others (females) in identical circumstances. But the right to have custody is not the only question. The decision affects males and females differently, a bastion of discrimination by sex, with respect to many rights and privileges of a male parent.

The Maryland Court of Special Appeals ignored the principle announced by this court in *Reed v. Reed*, 404 U.S. 71 (1971), *Frontiero v. Richardson*, 411 U.S. 677 (1973), *Weinberger v. Wiesenfeld*, _____ U.S. _____ (1975), and *Station v. Stanton*, _____ U.S. _____ (1975).

In *Reed* this court had before it an Idaho probate statute providing that "males must be preferred to Females", in issuance of letters of administration. The Idaho Supreme Court having held that the statutory preference given to males was mandatory, this court reversed on the ground that the distinction between men and women was an "invidious

discrimination". With respect to the equal protection clause, the court said:

> In applying that clause, this court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways.
>
> * * * The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced will be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920). The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to state objective that is sought to be advanced by the operation of § 15-312 and 15-314.
>
> * * * In upholding the latter section, the Idaho Supreme Court concluded that its objective was to eliminate one area of controversy when two or more persons, equally entitled under § 15-312, seek letters of administration and thereby present the probate court "with the issue of which one should be named." The court also concluded that where such persons are not of the same sex, the elimination of females from consideration "is neither an illogical nor arbitrary method devised by the legislature to resolve issue that would otherwise require a hearing as to the relative merits . . . of the two or more petitioning relatives . . . " 93 Idaho, at 514 P.2d at 638.
>
> * * * The objective of § 15-312 clearly is to establish degrees of entitlement of various classes of persons in accordance with their varying degrees and kinds of relationship to the intestate. Regardless of their sex,

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> persons within any of the enumerated classes of that section are similarly situated with respect to that objective. *By providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the Equal Protection Clause, Royster Guano Co. v. Virginia, supra.* (Emphasis supplied)

Subsequently, in *Frontiero* this court held unconstitutional a Federal statutory provision under which a serviceman was allowed to claim his wife as a dependent without regard to whether she was in fact dependent upon him, while a servicewoman could not claim her husband as a dependent unless he was in fact dependent upon her for over one-half of his support.

Speaking for four members of the court, Mr. Justice Brennan said:

> Although the legislative history of these statutes sheds virtually no light on the purposes underlying the differential treatment accorded male and female members, a majority of the three judge District Court surmised that congress might reasonably have concluded that, since the husband in our society is generally the "breadwinner" in the family and the wife typically the "dependent" partner—"it would be more economical to require married female members claiming husbands to prove actual dependency to such members." 341 F.Supp., at 207. Indeed, given the fact that approximately 99% of all members of the uniformed services are male, the District Court speculated that such differential treatment might conceivably lead to a "considerable saving of administrative expense and manpower." *Ibid.*
>
> * * * We can only conclude that classifications based upon sex, like classifications based upon race, alienage, or national origin, are inherently suspect, and must therefore be subject to strict judicial scrutiny. Applying the analysis mandated by that stricter

> standard of review, it is clear that the statutory scheme now before us is constitutionally invalid."

Four other members of the court concurred in the decision in *Frontiero*, three on the ground that under the decision in *Reed* the petitioner was not accorded due process of law, and one on the ground that the statutes worked an "invidious discrimination."

Subsequently, in *Weinberger v. Wiesenfeld*, this court had before it a matter pertaining to the Social Security Act and Mr. Justice Brennan delivered the opinion saying:

> * * * Since the Constitution forbids the gender-based differentiation premised upon assumptions as to dependency made in the statutes before us in *Frontiero*, the Constitution also forbids the gender-based differentiation.
>
> * * * The Court held in *Kahn v. Shevin*, supra, 416 U.S., at 355, that a statute, "reasonably designed to further a state policy of cushioning the financial impact of spousal loss upon that sex for which that loss imposes a dispartionately heavy burden" can survive an equal protection attack, see also *Schlesinger v. Ballard*, supra, *but the mere recitation of a benign, compensatory purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme.* (Emphasis supplied)
>
> * * * It is no less important for a child to be cared for by its sole surviving parent when that parent is male rather than female. *And a father, no less than a mother, has a constitutionally protected right to the "Companionship, care, custody, and management" of "the children he has sired and raised [which] undeniably warrants difference and, absent a powerful countervailing interest, protection." Stanly v. Illinois*, 405 U.S. 645, 651 (1972)." (Emphasis supplied)

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> * * * Since the gender-based classification of 402(g) cannot be explained as an attempt to provide for the special problems of women, it is indistinguishable from the classification held invalid in *Frontiero*. Like the statutes there, "*[b]y providing dissimilar treatment for men and women who are . . . similarly situated, the challenged section violates the [due Process]*[4] *clause.*" *Reed v. Reed*, 404, U.S. 71, 77 (1971)" (Emphasis supplied)

Subsequently, in *Stanton v. Stanton*, this Court had before it a matter of child support. Mr. Justice Blackmun delivered the opinion, where this court said:

> * * * This case presents the issue whether a state statute specifying for males a greater age of majority than it specifies for females denies, in the context of a parent's obligation for support payments for his children, the equal protection of the laws guaranteed by §1 of the Fourteenth Amendment.
>
> * * * We noted probable jurisdiction 419 U.S. 893 (1974).
>
> ***We find it unnecessary in this case to decide whether a classification based on sex is inherently suspect. See *Weinberger v. Wiesenfeld*, ____ U.S. ____ (1975); *Schlesinger v. Ballard*, ____ U.S. ____ (1975); *Geduldig v. Aiello*, 417 U.S. 484 (1974); *Kahn v. Shevin*, 416 U.S. 351 (1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971)

4. While the Fifth Amendment contains no equal protection Clause, it does forbid discrimination that is "so unjustifiable as to be violative of due process" *Schneider v. Rusk* 377 U.S. 163 168 (1964). See also *Bolling v. Sharpe*, 347 U.S. 497 499 (1954). The Supreme Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment, see e . . . *Schlesinger v. Ballad* ____ U.S. ____ (1975); *Jiminez v Weinberger*, 417 U.S. 628, 637 (1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973), *Weinberger v. Wiesenfeld* ____ U.S. ____ (1975).

> * * * No regard was paid under the statute to the applicants' respective individual qualifications.
>
> * * * "A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)." Id., at 76."
>
> * * * Not withstanding the "old notions" to which the Utah Court referred, we perceive nothing rational in the distinction drawn by §15-2-1 which, when related to the divorce decree, results in the appellee's liability for support for Sherri only to age 18 but for Rich to age 21, this imposes "criteria wholly unrelated to the objective of that statute." *A child, male or female, is still a child.*" No longer is the female destined solely for the home and the rearing of the family, and only the male for the market place and the world of ideas. See *Taylor v. Louisiana*, ——— U.S. ———, ———, n.17 (1975). (Emphasis supplied)
>
> * * * We therefore conclude that under any test—compelling state interest, or rational basis, or something in between—§15-2-1, in the context of child support, does not survive an equal protection attack. In that context, no valid distinction between male and female may be drawn.
>
> * * * Our conclusion that in context of child support the classification effectuated by §15-2-1 denies the equal protection of the laws, as guaranteed by the Fourteenth Amendment . . .

The Court of Special Appeals not only refused to expose the questioned statute to judicial scrutiny; it did not even pay lip service to the requirement that the classification must have a fair and substantial relation to the object of the legislation, as pertains to E.R.A. and Article 72A Maryland Code Annotated 1957 Amended. The Maryland courts' made

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no attempt to distinguish *Reed* or *Frontiero* or *Weinberger;* indeed, although the three cases posed primary bases for the appeal nor did they attempt to construe the E.R.A., Maryland Constitution or Article 72A, Maryland Code. The court not only refused to strike down an unconstitutional classification, "the mother is considered the natural guardian", but ignored the supremacy clause of Article VI, Constitution of the United States, by applying a constitutional test of its own making by simply ignoring the issues, leaving to this high Court to construe the State law.

There is no doubt the questioned statute treats men and women differently. It is a bastion of discrimination by sex and denies a fair and impartial trial to male citizens of the State of Maryland.

Like the three judge district court in *Frontiero*, the Judicial Representatives of Maryland surmised the legislative act of the E.R.A. by ignoring the Legislative act which reinforced E.R.A. by its intent set forth in Article 72A Maryland Code Annotated 1957 which shed light on the purpose underlying the differential treatment accorded to males and females, as amended, and failed to construe the law.

The decision of the Maryland Court of Special Appeals, refusal of the Court of Appeals to review, is in conflict with decisions of the Supreme Court relating to Classifications based on sex, *Weinberger v. Weisenfeld*, *Stanton v. Stanton.*

Moreover, the decision(s) portends additional inroads of Federal Constitutional rights because the holding that a statute "Mother favored custodian" in the context of child custody and child support denies male citizens "Equal Protection" of the law guaranteed by the Fourteenth Amendment to Federal Constitution and the law of Maryland Article 46, Declaration of Rights, E.R.A., Maryland Constitu-

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tion, and Article 72A, Maryland Code Annotated 1957 and reflects disregard for the supremacy of the Seventh Amendment.

Such a distinction, the statute is archaic and overbroad "the mother is the favored custodian", and not tolerated under the Constitution as it "provides dissimilar treatment for men and women who are . . . similarly situated and is in violation of due process, equal protection clause to the Federal Constitution. *Reed v. Reed*, 404 U.S. 71; *Weinberger v. Wiesenfeld* _____ U.S. _____ (1975).

Such a gender-based generalization cannot suffice to justify the denigration of the efforts of male citizens to guide and control the moral, spiritual, social, responsibilities of the children they have sired and raised.

CONCLUSION

This case presents substantial federal questions relating to the interpretation and application of the due process and equal protection clauses of the Fourteenth Amendment and the supremacy of the Seventh Amendment and the supremacy clause of Article VI of the United States Constitution, and connotes State Courts failure to construe its own laws. Probable jurisdiction should be noted, and the case should be given plenary consideration, with briefs on the merits and oral argument, for resolution of those questions.

Respectfully submitted,

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APPENDIX A

UNREPORTED

IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 368
September Term, 1973

LORN L. HINISH

v.

HILDA R. HINISH

Gilbert,
Menchine,
Davidson,
JJ.

Per Curiam

Filed: January 14, 1974

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In *Mullinix v. Mullinix*, 12 Md. App. 402, 412 (1971) we said:

> "Custody cases are like fingerprints because no two are exactly the same. That is why we must afford great weight to the Chancellor's opportunity to see and hear the witnesses, *Trudeau v. Trudeau*, 204 Md. 214, 218, 103 A.2d 563 (1953), inasmuch as we are supplied with only the transcribed testimony. *Myers v. Butler*, 10 Md. App. 315 (1970)."

With that caveat in mind, we proceed to discuss the instant appeal.

Lorn L. Hinish, appellant, was divorced *a vinculo matrimonii* from Hilda R. Hinish, appellee, because of Mrs. Hinish's adultery. The decree of divorce, entered on November 17, 1972, provided in part:

> "[A]ll matters pertaining to child custody . . . be reserved for future determination by the court."

The Department of Social Services was asked to conduct an investigation and to report to the trial court its recommendation concerning the custody of Lori Elizabeth Hinish, the minor child of the parties. Subsequently, the custody matter was heard in open court before Judge James Macgill on March 6 and June 5, 1973. At the trial a number of witnesses appeared on behalf of both parties. The witnesses espoused the virtues of the particular litigant in whose behalf they had been called to testify. The Department of Social Services, through a case worker, Mrs. Katherine Keech, recommended that custody be awarded to the appellee. Appellant, through his counsel, vigorously attacked the nature and extent of the investigation that was conducted by Mrs. Keech.

Appellant also attempted to show that the appellee was continuing to have sexual liasons with the man that was named as her paramour in the divorce action. A further

attempt was made to demonstrate that Lori, then age five, would be deprived of a college education because of the appellee's religious beliefs. Appellant sought to show that members of Jehovah's Witnesses did not believe in a college education for females. The attempts, however, fell short of their mark.

The testimony did reveal that the appellee had been a member of Jehovah's Witnesses, but she was expelled therefrom for "moral" reasons. She was, at the time of the trial, actively seeking readmission to the congregation. The appellant has remarried, and his wife testified that she could and would provide a good home for the infant.

The overriding consideration in a custody case is what is in the best interest of the child. *Kauten v. Kauten*, 257 Md. 10 (1970); *Orndoff v. Orndoff*, 252 Md. 519 (1969); *Mullinix v. Mullinix, supra; Widdoes v. Widdoes*, 12 Md. App. 225 (1971). In *Oliver v. Oliver*, 217 Md. 222 (1958) the Court said, at 228:

> "In divorce cases, courts are inclined to award the custody of minor children to the innocent party, but it does not follow as a matter of course that the plaintiff in a divorce action is entitled to custody. The question is within the sound discretion of the chancellor. If, for instance, the child is so young or in such condition of health as to need the care of a mother, particularly if the child is a girl, custody is ordinarily awarded to the mother, at least temporarily, even if the father is without fault. *Madden, Persons and Domestic Relations* (1931), 377-378. And there is no absolute rule that one who has committed adultery is morally unfit to have custody of a child. The circumstances in a particular case justify awarding a minor child to a parent who has committed adultery. The guilt of a wife may even be overlooked where she is not grossly immoral. 2 *Nelson, Divorce and Annulment* (2d ed., 1945), Sec. 15.06."

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We said in *Mullinix v. Mullinix, supra* at 411:

> "It must be borne in mind that the award of custody is not a prize to be handed by the court to the innocent or unerrant parent solely on the basis of his or her innocence or unerring ways. The controlling factor, as we have stated, is what disposition is in the best interest of the children."

This Court, speaking through Judge Moylan in *Kirstukas v. Kirstukas*, 14 Md. App. 190 (1972) quoted from *Hild v. Hild*, 221 Md. 349 (1960) wherein it is said, at 357:

> "Since the mother is the natural guardian of the young and immature, custody is ordinarily awarded to her, at least temporarily, in legal contests between parents when other things are equal, even when the father is without fault, provided the mother is a fit and proper person to have custody."

The rule, however, is not inflexible nor is the mother entitled to custody of an infant daughter as a matter of law. The welfare of the child is of paramount inportance so that the general rule that a mother is awarded custody may be modified in order to give precedence to the rule that the overriding consideration is the welfare of the child. 2 *Nelson, Divorce and Annulment* §15.09 (2d ed. 1961 rev.); *Kirstukas v. Kirstukas, supra.*

Applying the Maryland law to the instant case it is evident that Judge Macgill found both parents qualified to have custody but concluded that under the circumstances of this case, the best interest of the child, at this time, demanded that custody be awarded to the mother.

Custody awards, of course, are temporary and are subject to change as the welfare of the child demands. *Winter v. Crowley*, 231 Md. 323 (1963); *Wirth v. Wirth*, 192 Md. 21 (1949); *Pitts v. Pitts*, 181 Md. 182 (1942).

That Mrs. Keech's testimony was admissible in evidence is beyond question. The weight given to her testimony was, however, a matter for the Chancellor. We perceive no error in Judge Macgill's refusal to allow questioning of Mrs. Keech as to whether or not she followed, in considering the investigation, the guidelines of the Court of Appeals and this Court. It was for the trial judge to determine whether or not the investigation followed the guidelines, not Mrs. Keech. Judge Macgill's "memorandum" complies with the requirements of Md. Rule 188 b. [formerly Md. Rule 18 c].

Appellant suggests that Art. 46 of the Maryland Declaration of Rights "would seem to prohibit the presumption that a mother is to be deemed more fit custodian for a child of tender years." He avers that there was no "scientific evidence" offered by the appellee to overcome the "even-handed application" of the requirements of Art. 46. We observe that appellant offered no "scientific evidence" either. An award of custody is predicated upon evidence presented to the court and is bottomed on the general rule of what is in the best interest of the child.

> "While the mother is still regarded as the favored custodian for children of young and tender years, *Hild v. Hild, supra,* such a view does not preclude the father from demonstrating that if it is in the best interest of the child, he should be granted custody." *Marshall v. Stefanides,* 17 Md. App. 364, 376 (1973).

The chancellor was required to decide the instant case on the basis of evidence before him, and that he did so contrary to the wishes of the appellant does not make the conclusion erroneous.

Applying our independent, reflective judgment to the case at bar, and giving due regard to the opportunity of the

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trial judge to see and hear witnesses, we are unable to conclude that Judge Macgill's decision was wrong.

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY THE APPELLANT.

APPENDIX B

UNREPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 1009
September Term, 1974

LORN HINISH

v.

HILDA R. HINISH

Morton,
Powers,
Lowe,
JJ.

PER CURIAM

Filed: June 17, 1975

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PER CURIAM

Appellant couches in terms of "equal" rights a demand for extraordinary treatment. Having once appealed and lost an unfavorable decree of custody, he then petitioned for modification, lost again, and now appeals a second time on the basis of the issues determined the first time around. We begin then, by noting what this opinion is not. It is not a resolution of issues relative to the original custody decree; they have been previously resolved, *Hinish v. Hinish, per curiam*, No. 368, September Term, 1973 (filed January 14, 1974). By strictly limiting this opinion to issues arising out of the second hearing, which resulted in denial of appellant's modification petition, we obviate much of appellant's briefed argument. The right of a litigant to his "day in court," is a right described in the singular, not the plural.

Lorn L. Hinish obtained a divorce *a vinculo matrimonii* from his wife Hilda R. Hinish[1] on November 17, 1972, on the basis of adultery. The question of custody was reserved for subsequent determination. After further hearing Judge James Macgill granted custody of the couple's five year old daughter, Lori, to Mrs. Hinish. In the memorandum accompanying his decree, Judge Macgill stated that there was "no reason to disbelieve" that Mrs. Hinish had terminated her adulterous relationship. Although he thought that either parent could successfully care for Lori, he carefully weighed all the evidence presented and concluded that granting Mrs. Hinish custody would be in the "best interest" of the child, citing *Cornwell v. Cornwell*, 244 Md. 674. This Court carefully reviewed the evidence before the chancellor in light of our traditional inclination toward granting custody to the innocent party. We affirmed the chancellor.

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1. now Hilda R. Somers

Since that time, two events occurred which prompted Mr. Hinish to petition the lower court to modify its decree: Mrs. Hinish married her paramour, John A. Somers, and Mr. Hinish discovered that Mrs. Hinish's new husband had suffered serious brain injury in 1967 which resulted in his temporary adjudication as an incompetent. After hearing arguments and evidence on three different occasions Judge Macgill denied the petition December 3, 1974.

ADVISORY JURY TRIAL

Relying on 30A C.J.S. "Equity," Sec. 495, and Art. XV, Sec. 6 of the Maryland Constitution, appellant contends that the chancellor wrongfully denied his Prayer for Advisory Jury Trial. In jurisdictions where the practice is permitted, a court of equity may utilize an "advisory jury" to pass upon issues it has framed, for the purpose of "enlightening, or informing, the conscience of the court." 30A C.J.S. "Equity", Sec. 495, *supra*.

In those jurisdictions where advisory juries are used, however, they exist, as appellant's authority points out:

> "In the absence of express statutory or constitutional provisions . . . "

The chancellor noted in his Order and we repeat that advisory jury verdicts were expressly abolished in Maryland by Rule 517:

> "The practice heretofore existing of transferring issues of fact arising in an action in equity to a court of law for an advisory verdict by a jury is hereby abolished. All such issues shall be determined in the equity court in accordance with the existing equity practice, without a jury."

It hardly need be added that the right of trial by jury assured by the Maryland Constitution provision cited, applies to "civil proceedings" in "Courts of Law."

DUE PROCESS

Under the heading of "due process" appellant lumps a series of complaints. First, from myriad judicial proceedings he singles out two petitions on which he claims to have been denied a hearing. The first was a requested hearing on the January 14, 1974 10-day custody decree. It is true that he was made subject to an injunction by Judge Macgill and that he did not receive a requested hearing. But the chancellor's failure to grant the hearing was the result of appellant's own inaction. The injunction specified two days to *file* an application for hearing on the question of the injunction's dissolution; appellant *filed* his request for hearing four days later.[2]

The other hearing denial he alleges was on his May 10, 1974 petition for a contempt citation; yet, at the May 30, 1974 hearing the matter was fully considered. Appellant's attorney cross-examined Mrs. Hinish at length regarding her withholding of visitation rights. He proffered what Mr. Hinish's testimony would be, although he did not find it necessary to call him, and concluded by telling the court "That's all I have." We are satisfied the chancellor fully considered the matter before dismissing the petition.

Appellant's final "due process" complaint arises from the denial of his request for change of venue. The request was filed April 10, 1974, one month after the chancellor heard arguments and evidence on the petition for modification of

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2. *Contra*, Md. Rule 306, Sec. C 3. regarding *notice* of pleadings.

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custody. Even if appellant had a right of removal, he would have forfeited it by the tardiness of his request. *Cf. McMillan v. State*, 68 Md. 307. In any event, the Court of Appeals has held that there is no right of removal in equity suits. *Olson v. Love*, 234 Md. 503, 504. *Accord, Shreffler v. Morris*, 262 Md. 161, 169.

BIAS

It seems the primary complaint appellant has may be summarized as a dissatisfaction with the chancellor's decision on the merits of his petition. We shall in due course determine whether the chancellor's decision was in fact in "the best interests of the child," *Sullivan v. Auslaender*, 12 Md. App. 1, but we must first consider the various charges of bias hurled at the chancellor, as well as two of the sources of information upon which he relied, *viz.*, the Department of Social Services and a private psychiatrist.

Central to appellant's seemingly boundless accusations is the report of a private psychiatrist, Dr. Jonas Rappeport. At the March 11, 1974 hearing appellant's counsel suggested that Mr. Somers be ordered to submit to psychiatric examination:

> "Your Honor, does—what I was particularly wondering is whether Howard County has a psychiatric service available, and whether Your Honor would consider requiring Mr. Somers to be analyzed—examined as to that."

The chancellor expressed doubt as to his authority to so order since Mrs. Hinish's new husband was not a party to the custody modification proceeding. Appellee opposed retention of a psychiatrist but suggested that if any examination

were undertaken, Mr. Hinish should submit himself as well. At the May 30, 1974 hearing, appellant pressed his request:

> "... Mr. Somers, who is in the household where the child is, accordingg to the Department of Social Services, to be placed and continued, has some kind of a previous mental history. Now there's some indication that this may be now non-existent, but I don't think it's certain, and I felt the court perhaps might like to have some further expert knowledge."

Appellee persisted in her view that she "didn't think that it was necessary." Finally, indicating an inclination to permit the examination, the court told counsel that if an examination were undertaken, an impartial psychiatrist would have to be selected. *Appellant* suggested Dr. Rappeport, offered to pay his fee and himself submit to examination. After a long series of objections, appellee relented and accepted appellant's terms.

A final hearing was held November 1, 1974, following receipt of Dr. Rappeport's report. The report included evaluations of Mr. and Mrs. Somers, Mr. and Mrs. Hinish[3] and Lori. It seems that after appellant's strenuous efforts to have all involved evaluated, he was, and is, unhappy with the result. His counsel began the final hearing by telling the court:

> "I had assumed [Dr. Rappeport] would be here ... It doesn't make that much difference. We—uh—would actually not wish to have his report considered. It's negative, as far as we're concerned."

Notwithstanding that appellant was solely responsible for production of the report, he now objects to the chancellor's reliance thereon, on the basis of a threefold attack on Dr. Rappeport:

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3. Mr. Hinish has also remarried since the divorce.

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1. that he was not available for examination at the final hearing;
2. that he was supplied with background data which was unfavorable to appellant;
3. that he was previously acquainted with Mr. Somers.

All three may be summarily disposed of.

1. Dr. Rappeport was not available for testimony because appellant did not summons him. Even if he had been available, appellant's counsel, after conferring with his client, told the court:

"We'll waive our right to examine Dr. Rappeport."

That waiver also waived appellant's right to now complain of the absence of the psychiatrist.

2. As background material, the chancellor sent Dr. Rappeport copies of the 1972 and 1974 Social Services' reports, his memorandum and decree on custody, our opinion on the original decree, and physicians' reports on Mr. Somers contemporaneous with his brain injury. Dr. Rappeport's final report evidences that these documents were no more than "background." He conducted lengthy interviews with all persons concerned on which he primarily—if not totally—relied for the conclusions he reached. Appellant contends the expert was irreparably prejudiced by receipt of these documents. We regard the psychiatrist's consideration of these materials in conjunction with his interviews as comparable to, and no more objectionable than, an expert's hearing testimony in a trial situation and then submitting an opinion thereon. *Cf.* Md. Rule 546. We consider the material relevant if not necessary to the deliberations.

3. Appellant wrote the chancellor asking that another psychiatrist be substituted because Dr. Rappeport was

acquainted with Mr. Somers. This acquaintanceship consisted of their having attended the same high school and the University of Maryland some 30 years ago. They were not close friends even then and Dr. Rappeport had not seen Mr. Somers since 1948, although he carefully disclosed the mutual school attendance in his report. The chancellor adequately answered Mr. Hinish's objection:

> "You will recall that it was at your suggestion that Dr. Rappeport was picked in this case . . . Offhand, unless Dr. Rappeport was a friend of Mr. Somers' I cannot see how he would be disqualified simply because he attended the same schools with him."

Appellant is similarly unhappy with the reports from the Howard County Department of Social Services which were somewhat unfavorable to him. He claims that the social worker, Mrs. Keech, was prejudiced against him on the basis of sex, citing Md. Const., Art. 46 (the Equal Rights Amendment). We have examined the reports in question. They contain nothing more than Mrs. Keech's recitation of interviews she conducted with members of both the Somers and Hinish families, persons knowledgeable about the families and Lori's teachers. Unless it is Mrs. Keech's sex derived from chance of birth, we suspect it is Mrs. Keech's conclusion from the interviews to which Mr. Hinish takes exception:

Mr. Hinish's multiple allegations of violations by the chancellor of the Judicial Canon of Ethics are not within our realm nor see we indication thereof from the record. They must be resolved by the Commission on Judicial Disabilities, Md. Constitution, Art. IV, Sec. 4A-B; if indeed they exist at all.

BEST INTERESTS

Our final and most important obligation is to review the evidence presented to assure that the chancellor's decision

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was in the best interests of the child. *Sullivan, supra*, 12 Md. App. 1. We have carefully read all the testimony and perused all the documents included in the record before us. Appellant's petition urging change of custody because his former wife remarried and her new husband had suffered brain damage in 1967 is utterly without merit. The report of the psychiatrist selected and paid by appellant, after examination of everyone involved, including appellant, concluded:

> "Mr Somers seems much the healthiest of the group despite the brain damage he has. His recovery has been miraculous."

The record includes the 1967 physicians' reports and documents relating to Mr. Somer's previous adjudication as legally incompetent. It is supplemented by a later adjudication in 1971, that Mr. Somers was legally competent. Mr. Hinish preesented no evidence to counter that adjudication, nor evidence contradictory of Dr. Rappeport's comparative conclusion. Although, he obviously did not like the results of Dr. Rappeport's examination, it was he who laid the ground rules and, offering no other evidence, he must abide by the results. His counsel phrased his predicament appropriately:

> "I'm, in a sense, being hoist by my own petard, but that is one of the risks we took. One never knows the out—in spite of public opinion to the contrary, one doesn't know the outcome of an examination by an expert, regardless of who he was employed by. I think experts tend to keep themselves, to a great and admirable extent, detached from the question of who they're submitting their bill to."

The Social Services report tended to establish that either home could provide good care to Lori, but that no reason had been offered to justify the disruption generated by a change in custody. In light of that evidence, we must agree with the chancellor.

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CONCLUSION

In closing, we cannot help but reflect on the bitterness and the voluminousness of litigation to which this young child has been subjected. After spending a great deal of time reviewing the record, we find ourselves in accord with Dr. Rappeport's views:

> "This is indeed a sad situation. These are parents who obviously love their child but hate each other so much that they are willing to harm this child in order to get back at each other. The damage they have done is probably irreparable."

It seems that Lori, whose best interests should be the object of this litigation, was long ago forgotten by the litigants. Absent a substantial change of circumstances, for the child's sake we hope that this will be the end of their apparently obsessed squabbling. We have given the petitioner every benefit of the doubt on the issues raised. If that child's best interest is not manifested by compliance, we remind both parties that the chancellor's order:

> "expressly reserve[d] the right to award the custody of Lori to some qualified person, or agency, other than her parents and to curtail or terminate the visitation rights of the parties."

The curtailment or termination of rights of visitation is not conditioned upon a custody award to a third party.

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANT.

APPENDIX C

IN THE CIRCUIT COURT
FOR HOWARD COUNTY

EQUITY NO. 8253

LORN L. HINISH

v.

HILDA R HINISH

MEMORANDUM AND DECREE

In this case the husband has secured an absolute divorce from his wife on the ground of adultery. The questions of the custody of the infant child of the parties and a counsel fee for the wife were reserved for determination by this Court. Since the decree of divorce each party has sought injunctions against the other over the question of temporary custody. The wife had had de facto custody for a while and now the husband has such custody as a matter of "make-up time".

Lori, the only child as a result of the marriage of the parties is not quite six years old. When she was staying with her mother, she worked, she spent the day at the Thunder Hill Day Care Center on her return from kindergarten and until her mother could pick her up. Mrs. Hilda Hinish occupies an apartment in Columbia and Mr. Hinish occupies a four bedroom home on an acre of land. He has remarried and his present wife, a stepson, twenty-one years old, and his mother and father are living with him. He is employed as a cryptologic staff officer by the Department of Defense at a salary of something in excess of twenty-two thousand dollars ($22,000.00) per year. The take-home pay of his former wife is eighty-five dollars ($85.00) per week.

This Court referred the custody matter to the County Department of Social Services for an investigation and report. That Department recommended that the custody of Lori be awarded to her mother "with generous visiting in her father's home." A substantial number of witnesses appeared in court and testified as to the respective fitness of each parent to have Lori's custody. It was urged, on behalf of Mr. Hinish, that the defendant, his former wife, had not made a sufficiently strong showing to overcome the presumption against awarding custody to an adulterous mother. *Hild v. Hild*, 221 Md. 349, *Parker v. Parker*, 222 Md. 69.

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The defendant testified that she had terminated her adulterous relationship with Mr. John A. Somers, the co-respondent, in October, 1972, although she still maintains a social relationship with him. She is attempting to be re-admitted into the congregation of Jehovah's Witnesses from which she had been expelled, presumably because of her adultery. Mr. Somers had asked her to marry him "but there are legal problems involved and I want to get back into my religion again, first of all". Mr. Somers testified that the last time he went with the defendant was sometime in the Spring of this year.

The plaintiff raised several other issues as to the fitness of the defendant. He contended that Jehovah's Witnesses do not approve of college education for girls and that his ex-wife believed that, since the world was going to end in 1975, there was no need to worry about a child's education. Mr. Eugene Gordon Myers, an elder in Jehovah's Witnesses, said that there was no rule of his sect forbidding girls to go to college. He was also of the belief that the world was going to end in approximately two and a half years. If he and the defendant should prove to be right, the issue of a college education for Lori, would, of course, become academic. If they should prove to be wrong, this Court suspects that Lori herself, when the time is ripe, will make her own decision about college.

Mr. Hinish further contended that his next door neighbor, a friend of his ex-wife, was living with a man without benefit of matrimony and that she looked after Lori from time to time. The young lady in question took the stand and admitted her extra-marital relationship but said that Lori had not stayed with her since this relationship had developed. The witness said that she and the defendant confided in each other but she did not believe that the defendant approved of her relationship.

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Lori was described by certain of the witnesses as being a happy, responsive child, presenting no behavioral problems, although she was upset, on occasions, when she became involved in the tug-of-war over her custody.

The rule against awarding custody to an adulterous mother has been relaxed, to a certain extent, since *Oliver v. Oliver*, 217 Md. 222. The Court in that case said: "In divorce cases, courts are inclined to award the custody of minor children to the innocent party, but it does not follow as a matter of course that the plaintiff in a divorce action is entitled to custody. The question is within the sound discretion of the chancellor. If, for instance, the child is so young or in such condition of health to need the care of a mother, particularly if the child is a girl, custody is ordinarily awarded to the mother, at least temporarily, even if the father is without fault. And there is no absolute rule that one who has committed adultery is morally unfit to have custody of a child. The circumstances in a particular case may justify awarding a minor child to a parent who has committed adultery. The guilt of a wife may be overlooked where she is not grossly immoral." It was elsewhere stated that "The primary consideration in cases of this nature is the best interest and welfare of the children." *Cornwell v. Cornwell*, 244 Md. 674. See, also, *Orndoff v. Orndoff*, 252 Md. 519, *Neuwiller v. Neuwiller*, 257 Md. 285, and *Kauten v. Kauten*, 257 Md. 10.

In the instant case, this Court has no reason to disbelieve that the adulterous relationship has been terminated and that the mother is making a sincere effort to re-establish herself. There is no question that both parents are devoted to Lori although her father's passionate efforts, at times, to gain possession of her have probably not always been to her best interest. The emotional tug between her parents, if not handled wisely, may do her more harm than

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their past acts or idiosyncracies. Counsel for the plaintiff suggested that courts have heretofore regarded male custody with suspicion. The fact remains, however, that in most instances, on a day by day basis, a small girl must rely on her mother's attentions and companionship, however devoted her father may be. It has been indicated that the present Mrs. Hinish, who is now working, will give up her job and remain at home should her husband be awarded Lori's custody. It is at least conceivable that her attempts to be a surrogate mother at this stage in Lori's life will present problems for both of them. This Court believes that Lori's best intererest would be served, at least for the present, by awarding her custody to her mother.

At the close of the last hearing, pending a determination by this Court, temporary visitation rights were agreed to as follows: Mr. Hinish would have Lori with him from four p.m. to seven p.m. on Tuesdays and Thursdays and for every other weekend from four p.m. Friday to seven p.m. Sunday. This schedule will be adopted by this Court in its decree. Mrs. Hilda Hinish, the defendant, will be awarded the sum of twenty-five dollars ($25.00) per week for the support and maintenance of Lori so long as Mr. Hinish pays the charge for the day care center, which, this Court understands, he has been doing. A fee of two hundred and fifty dollars ($250.00) will be awarded the defendant for her counsel.

JAMES MACGILL
JUDGE

DECREE

For the reasons set forth in the aforegoing memorandum, it is this 19th day of June, 1973, by the Circuit Court

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for Howard County, sitting in Equity, Adjudged, Ordered and Decreed as follows: (1) That custody of the infant child of the parties, namely, Lori Elizabeth Hinish, be, and the same is hereby, awarded to the said Hilda R. Hinish, with the right to the said Lorn L. Hinish to have temporary custody of the said Lori Elizabeth Hinish on Tuesdays and Thursdays of each week from four o'clock in the afternoon to seven o'clock in the afternoon, and on alternate weekends from four o'clock on Friday afternoon to seven o'clock on Sunday afternoon. (2) That the said Lorn L. Hinish pay to the said Hilda R. Hinish the sum of twenty-five ($25.00) per week for the support and maintenance of the said Lori Elizabeth Hinish so long as he pays the charges for her care in the Thunder Hill Day Care Center, (3) That the said Lorn L. Hinish pay to the said Hilda R. Hinish the sum of two hundred and fifty dollars ($250.00) as a fee for her counsel. (4) That the said Lorn L. Hinish pay the costs of this case.

JAMES MACGILL
JUDGE

cc: Leonard J. Kerpelman, Esquire
cc: Hugh Burgess, Esquire

APPENDIX D

IN THE CIRCUIT COURT
FOR HOWARD COUNTY

NO. 8253 EQUITY

LORN L. HINISH

v.

HILDA R. HINISH

MEMORANDUM

With respect to the petition of the plaintiff for a modification of the decree of this Court awarding custody of the infant child of the parties, Lori, to his former wife, this memorandum will bring to date the posture of this case as set forth in the memorandum and order of this Court of July 11, 1974. Since the passage of the order, Dr. Jonas R. Rappeport was requested, pursuant to the suggestion of counsel for Mr. Hinish and with the concurrence of counsel for Mrs. Somers, to conduct a psychiatric evaluation of the parties, their respective spouses and of Lori and to submit the results thereof to this Court. This was done and on August 1, 1974, Dr. Rappeport forwarded his report and recommendations to this Court and sent copies thereof to counsel. The report was thorough and thoughtful and minced no words in asserting that the parties, in their constant bickering and vengeful attitudes, were careless of the harm they were doing to Lori. This is what was said:

> "This is indeed a sad situation. These are parents who obviously love their child but hate each other so much that they are willing to harm this child in order to get back at each other. The damage they have done is probably irreparable. I am concerned that it will continue despite the courts efforts to halt it in the best interest of Lori. If we could locate a foster home that could offer this child some protection from her parents while at the same time giving her the positive factors that both of them give her, she might be better off there. Unfortunately, such foster homes are not easy to locate and there might be additional undesirable factors were such a move attempted."

Dr. Rappeport observed that:

> "Mr. Somers seems much the healthiest of the group despite the brain damage he has. His recovery has been miraculous. While people with brain damage

> may have outbursts of temper, many do not. While he may have spoken exposively in the past, he does not now. While he may have had 'emotional liability and a hot temper' in 1967, immediately after his accident, I could not find any evidence of such now, nor could I demonstrate any 'inappropriate or silly affect' reported in 1971. He is no danger to this child."

It was recommended:

> "that custody and visits remain as is and that Lori receive psychiatric care as well as her mother and father. Lori needs help in coping with this situation. Her view of the adult world has been seriously distorted. If she isn't already, she will soon start to manipulate her parents. Both couples also need professional help in order to cope with their problems and more importantly in order to help Lori. I saw couples because I think this must be done together for reasons which I think are obvious."
>
> "If the court agrees with these recommendations I would hope that they could evolve some ingenious means of enforcing a program which would not encourage each parent to continue the tattle-tale game much to Lori's detriment. Perhaps a court order to obtain the aforementioned treatment along with fines of loss of visiting time if the therapists report a lack of cooperation."

In addition to the report and recommendations submitted by Dr. Rappeport, the Howard County Department of Social Services, following a hearing on the petition for modification of this Court's decree, and at the request of this Court, conducted another investigation with respect to the custody of Lori since the marriage of her mother to Mr. Somers. A portion of the report of that department, submitted to this Court on May 17, 1974, reads as follows:

> "Although we did not talk with Lori we observed that she seemed happy and relaxed in the Somers'

> home on May 1, 1974. We do believe, however, that the continuing conflict between the parents and the stress of dealing with their anxieties cannot help but have a debilitating effect on her emotional growth."

Subsequently, on May 22, 1974 the Department forwarded to this Court the school reports on Lori and in the covering letter it was stated that "We do not believe it would be of any benefit to Lori to remove her from her mother's custody at this time."

After Dr. Rappeport's report had been furnished the matter was again set for a hearing. At that time the parties and their respective counsel appeared but the matter was submitted to this Court for decision without testimony or argument. In view of the report of Dr. Rappeport, together with his recommendation and in view of the report and recommendation of the Howard County Department of Social Services, this Court concludes that the award of the custody of Lori to her mother should not be disturbed. For this reason, Mr. Hinish's petition will be denied. This does not end the matter, however, since this Court is concerned about the emotional health of Lori as a result of the situation described by both Dr. Rappeport and by the Howard County Department of Social Services. While it will continue the custody of Lori in her mother, it will require that Mrs. Somers arrange for psychiatric treatment for both Lori and herself. Likewise, this Court will require that Mr. Hinish, as a condition to the exercise of his visitation privileges with Lori, undergo similar treatment.

JAMES MACGILL
JUDGE

DECREE

The petition of Lorn Hinish for change of custody in the above entitled case, coming on for hearing and being submitted, testimony was taken in open Court, counsel were heard and the proceedings read and considered.

It is, thereupon, this 3rd day of December, 1974, by the Circuit Court for Howard County, sitting in Equity, for the reasons set forth in the aforegoing memorandum, Adjudged, Ordered and Decreed as follows:

(1) That said petition for custody be, and the same is hereby, denied.

(2) That custody of the infant child of the parties, Lori, be and the same is hereby, continued with Hilda R. Somers, subject to the visitation rights of her father, Lorn Hinish, as heretofore provided by decree of this Court, upon the following conditions:

(a) That the said Mrs. Somers, formerly Hilda Hinish, arrange for and provide psychiatric treatment for herself and for Lori, the infant child of the parties, and

(b) That the said Lorn Hinish also arrange for, and submit to psychiatric treatment.

(3) That in the event the provisions outlined by this Court in paragraph two of this decree are not complied with by the parties, then this Court expressly reserves the right to award the custody of Lori to some qualified person, or agency, other than her parents and to curtail or eliminate the visitation rights of the parties.

(4) That the said Lorn Hinish pay the cost of this proceeding.

JAMES MACGILL
JUDGE

CC:
Leonard J. Kerpelman, Esquire
Hugh Burgess, Esquire

APPENDIX E

IN THE
COURT OF APPEALS

No. 174

LORN L. HINISH,
Appellant

v.

HILDA R. HINISH,
Appellee

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PETITION
FOR
WRIT OF CERTIORARI

YOUR PETITIONER, Lorn L. Hinish, a Citizen of the United States and a resident and domiciliary of Clarksville, Maryland, Howard County, hereby alleges that he has been subjected to a procedure within the 5th Circuit Court, Howard County, State of Maryland, known as a Child Custody Hearing(s) which is part of a Divorce Proceeding (Eq. 8253) under which he was divorced A VINCULO MATRIMONII, dated November 17, 1972 on grounds of Adultery performed by his now ex-wife, Appellee, and subsequent child custody awarded to the adultrous mother by decree dated June 19, 1973, (Attachment 1), to wit, appeal was directed to the Court of Special Appeals (No. 368 Sept. Term 1973), and a reclama was provided, (Attachment 2), Judgment affirmed (Attachment 3). Prior to affirmation by the Court of Special Appeals two events occurred which brought the custody issue back to the Circuit Court in lieu of going to the Supreme Court: Mrs. Hinish married her Paramour, John A. Somers, and your petitioner had full knowledge that Mr. John A. Somers had serious brain damage and was for some three (3) years adjudicated as an incompetent (Attachment 4). These two facts constituted a 'change in Circumstances not in the best interest of his infant child', Lori E. Hinish, born August 21, 1967. To wit, after judgment affirmed by the Court of Special Appeals, the Chancellor heard testimony from your Petitioner, none was provided by Appellee nor anyone else, and the Chancellor refused to modify the decree of June 19, 1973, by decree (Attachment 5) thereby requiring a second review of issues by the Court of Special Appeals (Attachment 6) which was subsequently affirmed (No. 1009, attachment 7) of which

your Petitioner submits and alleges: is not without a degree of prejudice and bias, perhaps due to representation in proper person; possesses the undercurrent of a 'cover-up' and one of condoning Sex-Discrimination thereby allegedly enjoining the Circuit Courts alleged practice of Sex-Discrimination; is affirmation of a miscarriage of Justice resulting in substantial injury to legal rights; is not in consonance with previous Mandates of the Courts of Appeal thereby enhancing the decay, AD DAMNUM, of Social objectives of Citizens of Maryland; is lacking the requirements of foresight and vigilance required by responsible Judicial agents of State Activities.

The requirements of foresight and vigilance imposed on responsible Judicial agents of State activities are beyond question demanding and perhaps onerous, but they are no more stringent than the Public has a 'right' to expect. This requirement is an attribute of Public Officials (be they Judges, Legislators, Governors) which are management criteria whereby each are held accountable. It is respectfully submitted, that insufficient attention is being given to 'crime in the courtrooms' committed by Judicial Officers of Court of the State of Maryland. Strict standards are properly demanded of those who voluntarily assume positions of high trust and of authority in the business of State functions whose services effect the health and well-being of the Public that supports them. The criminal law has long applied not only to individuals with particular conciousness of wrongdoing but also to those whose Judicial positions give them responsibility for acts of commission or omission.

THEREFORE, your Petitioner does now submit this petition for WRIT OF CERTIORARI based on the following, but not limited thereto, argument(s).

1. Your Petitioner does herewith submit that the entire force(s) of the processes and actions of the State Courts of

Maryland during their Child custody, child support, and all matters pertaining thereto, is such that no male citizen can possibly hope for, or expect to receive, equal treatment under the history of decisions handed down by these Courts. Specifically awards of monetary support and child custody of minor children in the Circuit Court of Howard County, Maryland, is so one-sided in favor of female parties, the 'favored custodian' adage, discrimination by class, in such causes as to be almost a pre-ordained decision and/or preconceived conclusion of Judicial authorities. The fact that in, virtually all such child custody, child visitation, and child support hearings when it is the females desire she is always, to the point of being automatic, awarded custody/ guardianship of the children and full support and maintenance from the father of the children, all to wit is prime facie evidence of:

a. governmental discrimination on the basis of sex which is specifically prohibited by the clause in the Fourteenth Amendment to the U.S. Constitution which guarantees 'Equal' protection, 'due process', of the laws,

b. discrimination by the State of Maryland through the Howard County Circuit Court, Maryland, in violation of Article 46, the Equal Rights Amendment E.R.A.[1] and of Article 72A, Parent and Child, Maryland Annotated Code.[2]

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1. E.R.A., an acronym for Art. 46 of the Declaration of Rights of the Maryland Constitution and proposed twenty-seventh Amendment to the Constitution of the United States. Art. 46, which became effective December 5, 1972, states that "Equality of rights under the law shall not be abridged or denied because of sex." The proposed Federal Amendment, ratified by thirty-four of the required thirty-eight States read in part, Equality of Rights under the law shall not be denied or abridged by the U.S. or by any State on Account of Sex."

2. Art. 72A, Parent and Child, Maryland Annotated Code was amended, effective date July 1, 1974, to read "neither parent has any right superior to the right of the other concerning the child's custody."

2. Your Petitioner, alleges that the Court of Appeals, the Highest State Court, is the proper Chamber to rule on:

a. violation(s) of Personal 'Rights' guaranteed under the Constitution of the United States which affect the Citizens of Maryland,

b. Statutes and/or laws of the State of Maryland which directly control/affect the daily lives, the human rights, the civil rights, the legal rights guaranteed by the Maryland State Constitution and/or its State Laws.

c. Statutes that are so new, or vague because of their newness, that the lower Courts ignore them until mandated by this High Court, which provides the necessary guidance to the lower inferior Courts and to Citizens as Public Policy to serve as the controlling beacon to guide the Citizens during their travels on the sea of life. The E.R.A. and Article 72A Maryland Code, it appears fit this category since they are so new, and have not yet been construed by this high Court, so far as your Petitioners' investigations can reveal.

3. Your Petitioner, says and alleges that there can be no reasonable way any male person can be expected to either have any incentive to remain a member of society within the Jurisdiction of Maryland while living under a relm not adhering to its own Constitution, or accept that such orders of the Circuit Court laid down in the case at bar are considered as 'Equal' protection of the law as guaranteed by the Fifth, Seventh, Ninth, and Fourteenth Amendments to the U.S. Constitution, and, 'Equal Rights' under the State of Maryland laws guaranteed by the E.R.A. and Art. 72A, Maryland Annotated Code.

4. Your Petitioner does not object to providing reasonable support for his child and is able and willing to provide all of her support and provide a good and proper home for her if

he had custody/guardianship of her. He loves his child beyond that of his own life and wants the custody/guardianship of his child, in the best interest of the child, to have the association of her two brothers in the home of your petitioner, and has been actively pursuing same through legal channels, since August 1971 when his then wife factually deserted him, and the child in question, while they lay asleep to take up an adulterous relationship, but he now recognizes how futile it is for a male citizen to obtain or retain custody of children due to Judicial prejudices, he now recognizes how futile it is to ask for a change of venue when he feels his rights are being violated and now recognizes how futile it is to ask for and receive a Jury Trial to consider custody/guardianship and support and visitation matters in Equity Courts in the State of Maryland which is condoned by the Court of Special Appeals who normally retains jurisdiction of such causes and actions of child custody review. His efforts to have these matters heard in another jurisdiction, realizing the reliance of the Circuit Court on the local Howard County Social Services Department, of which your petitioner submits practices sex-discrimination based on sex, the female Natural Guardian Adage, since they do not recommend custody to fathers, and the obvious hostilities of the Howard County Circuit Court and its apparent dislike(s) to granting your Petitioner custody of the child; all to wit his endeavors have been futile because of the apparent governmental discrimination upon the basis of Sex which is clearly and conclusively in violation of Equal protection and 'due process' clauses of the aforesaid Amendments to the U.S. Constitution and the Maryland State Constitution with Amendments and Art. 72A Maryland Code.

5. Since an Equity Court in a divorce proceeding has continuing jurisdiction over the custody of minor children and may change custody when the interests of the children

require a final determination of custody can never be made.[3] The denial of the Circuit Court to modify its custody decree had the "effect of depriving a parent . . . of the care and custody of . . . child(ren)" and was therefore appealable. The Memorandum and Decree of December 3, 1974, is merely an extending arm of the custody decree of June 19, 1973, and therefore, it is submitted, puts the original decree again subject to attack since it is the controlling decree.

6. The request "Equal Rights" is not a demand for extraordinary treatment, it is a right guaranteed by the Constitution of Maryland. Having lost twice in a Circuit Court by unfavorable decree(s) by a Court allegedly practicing Sex-discrimination does not necessarily make the decision correct or right. The decree(s) of custody and issues relative thereto are always subject to attack when it is requested to be modified and the Court fails to modify it when given the opportunity to do so. It is therefore respectfully submitted the Court of Special Appeals erred by limiting its opinion to issues arising out of the second hearing which grants the right to attack the very reason for existence of the custody decree which must be adhered to by the parties. It is the custody decree of June 19, 1973, that the Circuit Court let stand as written, therefore, it is submitted is an appealable issue. One does not know he is being discriminated against untill after the act is done.

The custody decree(s) is alleged to be, by the Court of Special Appeals, predicated on "best interest" of the child citing *Cornwell v. Cornwell* 244 Md 674 as predicated on evidence presented to the Court and bottomed on the general rule of what is in the best interest of the child citing:

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3. *See* Courts and Judicial Proceedings Art. §3-602A(3) in accord with former Art. 16 §66(a).

> "while the mother is still regarded as the favored custodian for children of young and tender years, *Hild v. Hild*, supra, such a view does not preclude the father from demonstrating that if it is in the best interest of the child, he should be granted custody. *Marshall v. Stefanides* 17 Md. App. 364, 176 (1973)" citing *Hinish v. Hinish* No. 368 Sept. Term (1973) Ct. of Special Appeals.

It is respectfully submitted, the custody decree was not predicated on the evidence presented to the Court, as the evidence reflects not one fact detrimental to your petitioner and submits custody was awarded to the female because of the old adage "the mother is still regarded as the favored custodian" and is supported by the decree of June 19, 1973, when the Circuit Court said:

> "This court believes that Lori's best interest would be served, at least for the present, by awarding her custody to her mother"

The above statement was predicated on the Courts view directly preceeding:

> "The fact remains, however, that in most instances, on a day by day basis, a small girl must rely on her mother's attentions and companionship however devoted her father may be."
>
> and,
>
> "in the instant case, this court has no reason to disbelieve that the adultrous relationship has been terminated and that the mother is making a sincere effort to re-establish herself."
>
> and,
>
> "custody is ordinarily awarded to the mother, at least temporarily, even if the father is without fault."

It is therefore respectfully submitted the Court of Special Appeals had a right and obligation to answer the question put to them:

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> "is the female still considered as the favored guardian of minor children in the State of Maryland in child custody issues before the court system?"

Since the question has not yet been construed by the States High Courts, so far as your petitioner can determine, nor has the E.R.A. or Art. 72A Md. Code, been construed by this Court, it is respectfully submitted the proper Chamber for this ruling is the Court of Appeals as "the time is now ripe" for Art. 46, E.R.A. and Art. 72A, Parent and Child, Md. Code, to be construed by a State Court, as it applies to decisions of child custody.

Further, it is submitted, the law, E.R.A., has been abridged by the Circuit Court ruling:

> "a small girl must rely on her mother's attentions and companionship, however devoted her father may be."

and requires the immediate attention of this High Court.

Further, it is submitted, the E.R.A. and Art. 72A was squarely and firmly placed before the Court of Special Appeals, a State Court, to construe these laws but they failed to do so thereby leaving it to this High Court to Construe in the Public interest and policy for now and for all time.

7. Advisory Jury Trial–Since the Court of Special Appeals did not state its definition of 'Statutory or Constitutional Provision' it is submitted, they failed to answer the question:

> "Is rule 517 superior to the State Constitution, is Rule 517 in harmony with State and U.S. Constitution?"

"In the absence of express statutory or Constitutional provisions . . . " "advisory jury" is advisable and your Petitioner submits the Chancellor wrongfully denied his prayer for advisory jury trial, particularly, since the Court did

arbitrarily commit the future earnings of $15,000.00, more or less, and since support and maintenance of dependants as a 'civil action' has long been a matter cognizable in Equity, *Penna v. Warren* 204 Md. 467 and the State has always been considered a third interest in Divorce and family tie, it appears a jury trial was warranted.

It is submitted, denial of Jury trial in the absence of Statute or Maryland Constitutional Amendment to Art. XV, Sec. 6, under a "Rule of Procedure" (R.P. 517) is UNCONSTITUTIONAL and requires review of this High Court on a question of rights guaranteed by the U.S. Constitution and is a cause for Judicial review of their action.

8. Due Process—It is submitted the Court of Special Appeals in their opinion has misread the facts, or your petitioners files are in error as provided by the Court, and warrants bringing the case to this High Court for inspection.

The Court of Special Appeals acknowledges your Petitioner "was made subject to an injunction by Judge Macgill and that he did not receive a requested hearing." They further state "the chancellor's failure to grant the hearing was the result of appellant's own inaction." Further, they state "the injunction specified two days to *file* an application for hearing'' and, "appellant filed his request for hearing four days later[2]."

It is submitted, this is in error and the Court of Special Appeals wronged your petitioner by not ruling due process was denied as supported herewith, the "EX PARTE INJUNCTION" was filed January 14, 10:35 A.M., 1974 allows "three days" (Attachment 8) the actual filing date at the Circuit Court should be in accordance therewith depending on mail delivery, but your petitioner can not be sure on this point since the file is currently in the Court of Special Appeals,

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however, your Petitioner submits he fully complied with Rule 306 Sec. C3. to the best of his ability and the Court denied 'due process' and thereby violated his Civil Rights. Therefore, this is sufficient grounds to bring the case to this Chamber for inspection and ruling.

As to the second 'due process' complaint on denial of request for change of venue. The Court of Special Appeals states "the request was filed April 10, 1974, one month after the Chancellor heard Arguments and evidence on the modification of custody."

It is respectfully submitted, that there were additional issues to be presented and the custody issue was not yet resolved by the Chancellor. It is submitted on the day of appearance for hearing on March 11, 1974, the Court had full knowledge he was being sued by your Petitioner in Federal Court[4] and had full knowledge that certain allegations were submitted to the Commission on Judicial Disabilities (Md. Constitution Art. IV Sec. 4A-B) on alleged violations of Judicial Canons of Ethics. Therefore, he should have dismissed himself from "further consideration or participation in the State Court Proceedings" as was specifically allowed and honored in *Volmer, et. al. v. Hon. A. P. Close, Judge*, Civil No. H-74-347 U.S. District Court, Maryland, (July 1974) when Attorney General Burch proclaimed in argument:

> "*That Judge Close's removal of himself in light of the pendency of the instant (federal) proceeding is proper, if not necessary, course of action for him to have taken should be clear. See, e.g., Cannons of

4. The Federal Forum (Civil No. K-74-832) has retained jurisdiction but abstained on merits until State Courts have a chance to rule on the alleged Sex-discrimination charged, and to have a chance to construe E.R.A. and Art. 72A Md. Code.

Judicial Ethics Nos. IV, V, XII, XXVIII and XXXIII. See also Md. Constitution Art. IV. Sec. 7."

I therefore respectfully submit an impartial trial was not afforded your Petitioner and the Court of Special Appeals erred in not ruling accordingly and requires bringing to this Court for inspection.

As to the third allegation, dismissal off a grievance without a hearing applies to "petition for citation for contempt of court" filed May 10th 1974 (Attachment 9), in proper person, the court dismissed this petition on 11 July 1974 (Attachment 10) predicated on the testiimony of Mrs. Hinish given on another issue, not issues present in complaint, and was not directed to the hearing whiich resulted in the erroneous dismissal July 11, 1974. The issues presented in proper person were never set for hearing thius the Special Court of Appeals erred in its findings.

As to the Fourth, your Petitioner had a Contempt of Court petition against the female for refusiing visitation, merits heard by Judge Macgill March 11, 1974. No decision, to this date, has been handed down by Macgill as to innocence, guilt, or dismissal. This violated Mdl. Constitution Art. IV Part III Sec. 23—Judges to render decisions within two months of Argument or submission. The Court of Special Appeals refused to direct its attention to this violation of the Circuit Court. It would appear they have purposely ignored this and fails to protect the State Constitution and 'rights' guaranteed citizens thereunder, thereby it appears to be a situation demanding the review of this court.

9. Bias—The Court violated 'rules of evidence' by giving consideration of the reports submitted by Department of Social Services not given nor affirmed under oath. That is a fact, and the Court had full knowledge that they performed

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their investigation under 'cloud' namely, because they too were named as defendant in Federal Court suit brought by your petitioner and certainly constitutes a fact which their "impartiality might reasonably be questioned." However, the Court of Special Appeals did not make comment on this issue presented, therefore, it appears addittional grounds for this Court to review their actions is properly in line with this petition.

10. Best Interest—The Court of Special Appeals has overlooked one of the principal complaints that allowed "change of circumstances" to warrant a new hearing and failed to direct their Judicial attention thereto, namely, the law set forth by *Hild v. Hild* 221 Md. 349; *Parker v. Parker* 222 Md. 69; Annotated Code Md. §16 which relates to "marriage to the Paramour (Attachment 6 @ 27-28) plus those additional guidelines laid down by *Pangle v. Pangle* 134 Md. 66; *Dauhert v Dauhert* 239 Md. 303; *Levitsky v. Levitsky* 231 Md. 388; *Marshall v. Stefanides* 17 Md. App. 364, 376 (1973); and the Annotated Code (Attachment 6 @ 28-33).

The Court of Special Appeals says:

> "Appellant's petition urging change of custody because his former wife remarried and her new husband has suffered brain damage in 1967 is utterly without merit."

It appears the Court of Special Appeals has lost sight of mandates laid down by the Court of Appeals, which was pointed out to them, (Attachment 6 @ 27-29).

> "... but a strong showing must be made to overcome the usual rule against awarding custody to an adultrous mother. The fact that she subsequently marries the paramour (as in the case at bar) has not

> been regarded as meeting the requirements of such a showing" *Hild v. Hild*, supra.
>
> and,
>
> "Marriage with paramour not sufficient" . . . "that as a matter of law there is strong presumption against the fitness of an adultrous parent to *retain* or obtain custody of his or her child." (Md. Code §16)

It is submitted predicated on those mandates and facts at law, your petitioners "right" to request change and that request had 'STRONG MERIT' and the Court of Special Appeals erred in not considering those facts, thus requires the attention and review of this High Court.

It is further submitted, this Judicial neglect constitutes sufficient grounds to bring this case to this High Court for inspection and ruling on law.

Medical reports was provided to the Department of Social Services along with articles of Jehovah Witnesses (Attachment 11). The Court also was provided with partial medical reports plus a deposition of John Somers whereby foul and abusive language was used to representatives of court, currently in the Court of Special Appeals, which it is submitted is detrimental to the infant child.

It is respectfully submitted, your Petitioner had "strong merit" to request change.

11. Judicial Canon of Ethics—Your petitioner did submit his allegations to the Commission on Judicial Disabilities (Attachment 12) to wit the results of said inquiry was and is denied your Petitioner (Attachment 13).

12. Conclusion—The Court of Special Appeals inplies that acts of the parents constitutes Lori's best interest "was long forgotten by the litigants." It is respectfully submitted the "squabbling" is not at the doing of your Petitioner and

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there has been "squabbling" only when visitation was denied the father, your petitioner, and none would have ever existed had the Circuit Court protected your petitioners rights to visit with his child. All Squabbling were surrounded by the 'right' of the father to visit with the child but the Circuit Court refuses to enforce visitation rights, allows the female custodian to use the child as blackmail and apparently condoned by the Court of Special Appeals since it was presented as issue (Attachment 6 @ 23).

The "best interest of the child" is what all your Petitioners litigation is about since in my humble opinion the Circuit Court has failed to protect the Childs best interest and is condoned by the Court of Special Appeals by ignoring the issues presented.

13. It was pointed out to the Court of Special Appeals in Oral Argument, May 8, 1975, that the Supreme Court decisions laid down by *Weinberger v. Wiesenfeld* No. 73-1892 (March 19, 1975) and *Stanton v. Stanton* No. 73-1461 (April 15, 1975) substantially puts the States on notice that they will strike down any State Law that constitutes 'different treatment of the Sexes' but they apparently chose to ignore my comments.

> "And a father, no less than a mother, has a constitutionally protected right to the "companionship, care, custody, and management" of "the children he has sired and raised" supported by *Stanley v. Ill.* 405 U.S. 645, 651 (1972)
>
> and,
>
> "By providing dissimilar treatment for men and women who are . . . similarly situated the challenged section violates the (due process) clause (5th Amendment) supported by *Reed v. Reed* 404, U.S. 71, 77 (1971)"

Therefore, the gender-based classification by Judge Macgill, in the case at bar, citing *Hild v. Hild*, supra, confirmed by the Court of Special Appeals, and in that context it is respectfully submitted, the Supreme Court directs its belief and thus law of the land clearly strikes down the "natural Guardian Theory" based on Sex-classification.

The Court of Special Appeals ignored this plea and it is submitted this is a cause for Judicial review of their action, in view of E.R.A. Art. 46 Maryland Constitution and Art. 72A, Parent and Child, Maryland Annotated Code.

WHEREAS, your Petitioner, Lorn L. Hinish hereby says: that sufficient facts have been presented to this High Court of acts performed by the Circuit Court, condoned and affirmed by the Court of Special Appeals, that:

a. Appear to be deemed desirable and of great Public interest as pertains to Equal Rights (Art. 46, Maryland Constitution E.R.A.), Equal Protection of the law and due process of law guaranteed under Federal and State Constitution(s), with Amendments, the 5th, 7th, 9th, and 14th Amendments, E.R.A. Maryland Constitution and Art. 72A, parent and child, Maryland Annotated Code; improprieties taken by a State Judicial Officer, i.e., canons of Ethics, that alludes to the fact that a specific Court is allegedly practicing Sex-Discrimination against a class of people, the male citizen, fathers, and directly against your Petitioner, based on pattern, practice and custom in violation of Federal and State law, under color of law "female Natural Guardian" and perhaps a conspiracy exists to keep the male citizen in a state of oppression in child custody issues and causes.

b. Appear that E.R.A. and Art. 72A, Md. Code, are laws that are so new or vague, that the proper place for construing these Statutes, that effect daily lives and legal Rights of Maryland Citizens, since they have not heretofore

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been construed by this Court as applies to the Law of Maryland, now must be the burden of this High Court.

c. Appear necessary for re-examination of actions to further growth of State Law.

d. Appear necessary to review erroneous or unwarranted acts or proceedings, questions at law, miscarriage of Justice resulting in substantial injury to legal rights of citizens of Maryland, your Petitioner, and the child of this litigation, whether judgment is prejudicial and materially harmful to your Petitioner, male citizens of Maryland, and/or to the children in the relm of the State of Maryland.

WHEREFORE, your Petitioner, hereby prays:

1. This High and Most Honorable Court grant this Petition for Writ of Certiorari from the Court of Special Appeals Decision(s).

2. Grant Petitioner such other relief as appropriate in this cause and action.

Respectfully submitted,

LORN L. HINISH
In Proper Person
6413 Lochridge Road
Clarksville, Maryland 21044
PH: (301) 531-5915

Certificate of Service

I HEREBY CERTIFY that a copy of the aforegoing 'Petition for Writ of Certiorari', and enclosures thereto, was mailed this 27th day of June, 1975, to Hugh Burgess, Esq., Attorney for Appellee, 8370 Court Avenue, Ellicott City, Maryland 21043.

Lorn L. Hinish

ATTACHMENTS TO PETITION FOR WRIT OF CERTIORARI

1. Circuit Court Custody Decree dated June 19, 1973.
2. Appeal to Court of Special Appeals Brief No. 368, Appellant. Reclama of Appellee, No. 368.
3. Court of Special Opinion No. 368.
4. Medical Rpt. on Somers.
5. Circuit Court denied Motion to Change Custody dated 3 Dec. 1974.
6. Brief to No. 1009, Appellant. None submitted for Appellee, nor Oral Argument presented.
7. Court of Special Appeals opinion dated June 17, 1975 No. 1009.
8. Ex Parte Injunction and Request for hearing.
9. Petition for Citation for Contempt May 10, 1974, proper person.
10. Circuit Court Dismissal of May 10, 1974 Petition.
11. Medical Reports provided Social Service and Jehovah Witnesses Articles.
12. Letter from Mr. Katz acknowledging Complaints to Judicial Disabilities Comm.
13. Mr. Katz refusing to provide results of investigation.

IN THE
COURT OF APPEALS

No. 174

LORN L HINISH,
Appellant

v.

HILDA R. HINISH,
Appellee

MOTION
TO CORRECT
PETITION FOR WRIT OF CERTIORARI

YOUR PETITIONER, Lorn L. Hinish, moves for leave to correct Note 2, bottom of Page 3, of Petition for Writ of Certiorari to read:

[2] Art. 72A, Parent and Child, Maryland Annotated Code was amended, effective July 1, 1974, to read "but, in any custody proceeding, neither parent shall be given preference solely because of his or her sex."

and delete the phrase:

"neither parent has any right superior to the right of the other concerning the child's custody"

YOUR PETITIONER, respectfully offers his sincere apologies to this Honorable Court for the error and hereby prays:

1. This Honorable Court grant this motion to correct error in previously submitted Petition for Writ of Certiorari.

Respectfully submitted,

Lorn L. Hinish
In Proper Person
6413 Lochridge Road
Clarksville, Md., 21044
PH: (301) 531-5915

Certificate of Service

I HEREBY CERTIFY that a copy of the aforegoing "Motion to Correct Petition for Writ of Certiorari" and the

attached Order of Court was mailed this 2nd day of July 1975, to Hugh Burgess, Esq., Attorney for Appellee, 8370 Court Avenue, Ellicott City, Maryland, 21043.

Lorn L. Hinish

COURT OF APPEALS
STATE OF MARYLAND

ORDER OF COURT

Petitioner, Lorn L. Hinish, having moved for leave to Correct Petition for Writ of Certiorari submitted on 27 June, 1975 having been duly read and considered, is by order of this Court, this ____ day of _____, 1975, hereby granted.

_____

JUDGE

APPENDIX F

IN THE
CIRCUIT COURT

No. 8253

LORN L. HINISH,
Petitioner

v.

HILDA R HINISH,
Respondent

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NOTICE
OF
FILING PETITION FOR CERTIORARI
TO THE SUPREME COURT OF THE
UNITED STATES

MR. CLERK:

Notice is hereby given that Lorn L. Hinish, Complainant in the above-named case, hereby says he will file Petition to the Supreme Court of the United States for Writ of Certiorari from the decision(s) of Court of Special Appeals, Certiorari denied by Court of Appeals August 1, 1975, affirming custody decree of the Fifth Circuit Court, State of Maryland.

Please prepare the court possessed record of the above case with certification and provide for transmission, in its entirety with Exhibits, to the Supreme Court in accordance with applicable Rules of said Court. Petition for Writ of Certiorari of State Court(s) ruling(s) thereon will subsequently be forwarded to the Supreme Court. This request complies with Rules of the Supreme Court (Rule 21).

The Petition for Writ of Certiorari is taken pursuant to 28 U.S.C. Section 1257.

Respectfully submitted,

LORN L. HINISH
Pro se.

6413 Lochridge Road
Clarksville, Maryland 21044
(301) 531-5915

OUGH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the aforegoing "Notice of Filing Petition for Certiorari to the Supreme Court of the United States" was mailed this 5th day of August 1975, to Hugh Burgess, Esq., Attorney for Respondent, 8370 Court Ave., Ellicott City, Maryland, 21043.

LORN L. HINISH,
Pro se.

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BLURRED COPY